

2 TO CT

(67)

ORIGINAL

FILED
HARRISBURG PAb-18
8

JUN 17 2002

IN THE UNITED STATES DISTRICT COURT MARY E. D'ANNECA, CLERK
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA per 700

Jeffrey L. Hanes	:	CIVIL ACTION NO. 1:00-CV-2003
Plaintiff	:	
v.	:	
Apple Chevrolet, Inc. et al.	:	Judge Sylvia H. Rambo ✓
Defendant	:	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE JUDGES OF SAID COURT:

AND NOW, on this 14th day of June 2002, comes Plaintiff, Jeffrey L. Hanes, by and through his counsel, Sandra Thompson, Esquire, to file this response, and to state as follows:

1. Admitted.
2. Admitted in part. Denied in part. On or around December 8, 2000, Defendants filed an Answer and Affirmative Defenses to Plaintiff's complaint.
3. Admitted in part. Denied in part. Although Plaintiff did not answer Defendants' claim of affirmative defenses, the issues were previously litigated through Defendants Motion to Dismiss, Terry Stewart, individually, as a Defendant. All other affirmative defenses that were not addressed in Defendants' motion were therefor waived.
4. Admitted.
5. Demurrer as to Defendants' belief. Denied that there is no genuine issue of material facts that entitle Defendants to judgment in their favor as a matter of law. Plaintiff's Statement

of Material Facts (which is filed simultaneously with this response and is incorporated herein by reference) proves that any order of judgment as a matter of law must be granted to Plaintiff.

6. Demurrer as to Defendants belief. Denied that Plaintiff cannot establish a basis for each element.
7. Admitted.
8. Denied that Plaintiff cannot satisfy a basis for the third and fourth elements of section 1981 claim, in that:
 - a. Plaintiff, an African American, was continually denied the right to secure the performance of the contract and was even arrested because of his attempts to demand enforcement of the contract, while Defendants only satisfied the contract days later after speaking to Jesse Pohlig, a Caucasian male.
 - b. Admitted in part. Denied in part. Denied that Plaintiff's behavior was unruly. Denied that Defendants have not had other customers who have been loud and angry when disputing a bill or contract terms. It is admitted that the Defendants have never before called the police on such a customer who was therefore similarly situated to Plaintiff. It is also a basis for the complaint.
9. Denied. Plaintiff has four (4) eyewitnesses who heard Defendants' agent, JoAnn Hall, refer to Plaintiff's race when discussing the contract; a written statement from Defendants' named witness, John Shriver, stating that the day after the incident, Defendants asked him if he would "help them out in the matter"; and Defendants' admission that although no threats were made verbally or by body language, they felt

threatened because the African American men, who were described as "giants", looked at them.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

1. deny Defendants' Motion for Summary Judgment;
2. grant Summary Judgment in favor of Plaintiff;
3. to find motion frivolous and to award reasonable attorneys fees; and
4. for such other relief that may be just and proper.

Respectfully Submitted:

Date: June 14, 2002



Sandra Thompson, Esquire
PA ID No. 84345

P.O. Box 2361
York, Pennsylvania 17405
717-845-1408

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Jeffrey L. Hanes	:	CIVIL ACTION NO. 1:00-CV-2003
Plaintiff	:	
v.	:	
Apple Chevrolet, Inc. et al.	:	Judge Sylvia H. Rambo
Defendant	:	

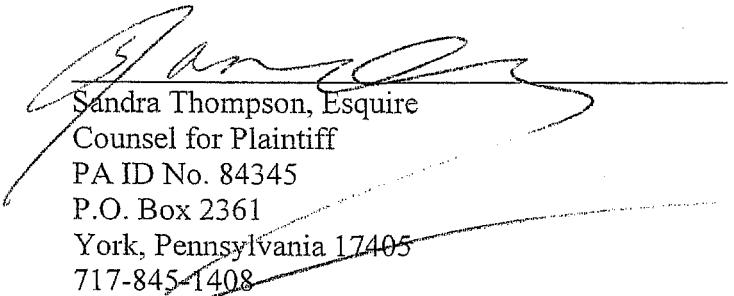
CERTIFICATE OF SERVICE

I, Sandra Thompson, Esquire, counsel for Plaintiff, do hereby certify that I have served upon Defendants a true and correct copy of Plaintiff's Response and Brief in Opposition to "Defendants' Motion for Summary Judgment", along with a copy of Plaintiff's Motion for Sanctions and supporting brief by postage prepaid first class mail, addressed as follows:

Sara A Austin, Esquire
Blakey, Yost, Bupp, and Rausch, LLP
17 East Market Street
York, Pennsylvania 17401

Respectfully Submitted:

DATED: June 14, 2002


Sandra Thompson, Esquire
Counsel for Plaintiff
PA ID No. 84345
P.O. Box 2361
York, Pennsylvania 17405
717-845-1408